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9
10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF FAIRBANKS

12 GRIPALL, LLC d/b/a GRIP ALL USA, an
13 Alaska limited liability company,

14 Plaintiff,

15 v.

16 INTERNATIONAL ADHESIVE
17 COATING COMPANY, INC. d/b/a
18 INTERNATIONAL TAPE COMPANY a
19 New Hampshire corporation,

20 Defendant.

NO. 4:14-cv-00028-RRB

COMPLAINT FOR BREACH OF
CONTRACT, BREACH OF
WARRANTY, DELIVERY OF
NONCONFORMING GOODS, AND
DAMAGES

21 Plaintiff GripAll, LLC dba Grip All USA for its complaint against Defendant
22 International Adhesive Coating Company, Inc. dba International Tape Company
23 alleges as follows:
24

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1 **I. PARTIES**

2 1.1 Plaintiff GripAll, LLC dba Grip All USA (“GripAll”) is an Alaska
3 corporation duly registered and licensed to do business in Alaska as a corporation and
4 has complied with all prerequisites for this suit.

5 1.2 Defendant International Adhesive Coating Company, Inc. dba
6 International Tape Company (“ITC”) is a New Hampshire corporation that does
7 business in the state of Alaska.

8 **II. JURISDICTION AND VENUE**

9 2.1 Personal jurisdiction is proper over Defendant ITC pursuant to Federal
10 Rule of Civil Procedure 4, and Alaska’s Long-Arm Statute § 09.05.015 as this action
11 relates to goods received by Plaintiff and sold by Defendant for use in the state of
12 Alaska and the Defendant is engaged in substantial activities in the state of Alaska.

13 2.2 This Court has jurisdiction over the subject matter of this dispute
14 between the parties pursuant to 28 U.S.C. § 1332 as there is complete diversity and the
15 amount in controversy requirement is met. Venue is proper in this Judicial District,
16 pursuant to 28 U.S.C. §1391, because the performance took place in this District.

17 2.3 Pursuant to Local Rule 3.3, this action should be properly assigned to
18 the Fairbanks division, because the acts or omissions which give rise to GripAll claims
19 and occurred in the Fairbanks district.

20 **III. FACTS**

21 3.1 GripAll is a manufacturer of high-traction grip tape that is used in both
22 commercial and non-commercial applications. GripAll’s headquarters is in Fairbanks,
23 Alaska. GripAll manufactures the GripAll products at its facility and warehouse located
24 in Fairbanks.

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1 3.2 ITC is a manufacturer of tape products and is based in Windham, New
2 Hampshire. GripAll has routinely purchased double-sided tape from ITC for
3 application to GripAll's traction surfaces and which are sold to GripAll customers. ITC
4 has sold materials to GripAll with knowledge that the materials would be used and
5 applied in the state of Alaska.

6 3.3 It is critical that the double-sided adhesive tape used by GripAll to
7 attach to the high traction surfaces be capable of being applied at low temperatures
8 because many of GripAll's customers are from Alaska and other cold climates. As a
9 result, in sourcing the adhesive tape, GripAll requested specifications from a number of
10 potential suppliers for tape that could be applied in cold temperatures.

11 3.4 In early 2013, ITC provided GripAll with a technical datasheet for its
12 Product 4520 - Double Coated Film Tape with High Peel Acrylic Adhesive ("4520
13 tape"). ITC represented that it was the original manufacturer of the 4520 Tape. The
14 technical datasheet for the product stated that "[T]his information is offered as a guide
15 to aid in proper selection" and represented that the 4520 Tape could be applied at
16 temperatures as low as 0° Fahrenheit. ITC representatives also repeatedly made
17 representations to GripAll representatives that the 4520 application tape could be
18 applied at 0° Fahrenheit.

19 3.5 ITC was also well-aware of GripAll's intended use of the tape and that it
20 would be applied in cold weather climates in Alaska.

21 3.6 In reliance upon ITC's technical datasheet, and the representations of
22 ITC's representatives to GripAll, GripAll entered into an agreement with ITC to
23 purchase the 4520 Tape for GripAll's manufacturing process. Over the course of its
24

1 relationship with ITC, GripAll purchased a significant amount of the 4520 Tape from
2 ITC.

3 3.7 During the course of its relationship with GripAll, ITC never notified
4 GripAll of any deviation in its tape during this period, and did not change the technical
5 datasheet for 4520 Tape. In reliance upon ITC's representations, GripAll used the 4520
6 Tape in its manufacturing process and printed packaging for its products stating that the
7 product could be applied at temperatures as low as 0° Fahrenheit. GripAll then sold the
8 products manufactured with the 4520 Tape to its customers.

9 3.8 GripAll printed marketing materials and supporting technical materials
10 for its product stating that the product could be applied at temperatures as low as 0°
11 Fahrenheit.

12 3.9 In early 2014, GripAll began receiving complaints and noticing issues
13 with the performance of the 4520 Tape when applied at low temperatures. GripAll
14 immediately notified ITC of the issue. Catherine Santa Fe, ITC's employee in charge of
15 technical sales and marketing, notified GripAll that the 4520 Tape currently being
16 supplied by ITC was actually manufactured by 3M Company ("3M"), not ITC. The 3M
17 product was known as its Double-Coated Tape No. 9741. 3M's technical data for the
18 Double-Coated Tape No. 9741 states that it should not be applied to surfaces below 50°
19 Fahrenheit.

20 3.10 ITC was selling the 3M Double Coated Tape No. 9741 to GripAll for a
21 price significantly more than it was being sold to the public by 3M. ITC was reselling
22 the 3M product for as much as fifty (50%) percent more that it could be purchased
23 directly from 3M.

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1 3.11 ITC breached its agreement with GripAll by delivering 4520 Tape that
2 did not conform to the express and implied warranties made in the technical datasheet
3 and the representations it made to GripAll. As a result, GripAll has been forced to
4 repair, refund, and/or replace products already sold to its customers, as well as repair
5 and/or replace GripAll's products manufactured with the 4520 Tape. GripAll has also
6 been forced to recall some of its products it manufactured with the 4520 Tape.

7 3.12 It may be necessary for GripAll to have further recalls of its product in
8 the future as to the product with the 4520 Tape supplied by ITC.

9 **IV. CAUSE OF ACTION: BREACH OF CONTRACT**

10 4.1 GripAll repeats and realleges paragraphs 1.1 through 3.10 of its
11 Complaint as if fully stated herein.

12 4.2 ITC has failed to perform in accordance with its agreement with
13 GripAll. The tape sold by ITC was not as represented by ITC.

14 4.3 Despite GripAll's demand, ITC has failed to refund the purchase price
15 for the 4520 Tape purchased by GripAll or compensate GripAll for its damages.

16 4.4 GripAll is entitled to damages for the refund of the purchase price of the
17 4520 Tape, its shipping cost, interest paid, cost for recalls and repairs to goods, and the
18 lost profits and loss of goodwill. GripAll's damages are greater than \$75,000.00, the
19 exact amount to be proven at time of trial.

20 **V. CAUSE OF ACTION: BREACH OF WARRANTY**

21 5.1 GripAll repeats and realleges paragraphs 1.1 through 4.4 of its
22 Complaint as if fully stated herein.

23 5.2 The contract between GripAll and ITC is a contract for the sale of
24 goods, and is govern by Alaska's Uniform Commercial Code, A.S. 45.02 *et seq.*

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1 5.3 ITC warranted that the 4520 Tape would be merchantable, would pass
2 without objection in the trade, would be fit for ordinary uses, and would be fit for a
3 particular purpose.

4 5.4 ITC breached its express and implied warranties.

5 5.5 GripAll is entitled recover damages against ITC as allowed under A.S.
6 45.02 *et seq.*, including incidental and consequential damages. GripAll's damages are
7 greater than \$75,000.00, the exact amount to be proven at time of trial.

8 **VI. CAUSE OF ACTION: DELIVERY OF NONCONFORMING GOODS**

9 6.1 GripAll repeats and realleges paragraphs 1.1 through 5.5 of its
10 Complaint as if fully stated herein.

11 6.2 The agreement between GripAll and ITC for the 4520 Tape is a contract
12 for the sale of goods, and is governed by Alaska's Uniform Commercial Code, A.S.
13 45.02 *et seq.*

14 6.3 ITC delivered nonconforming goods to GripAll.

15 6.4 GripAll seasonably rejected the goods.

16 6.5 Despite repeated demands, ITC failed to cure the nonconformity within
17 a reasonable time.

18 6.6 Because ITC delivered nonconforming goods and has failed to properly
19 cure, GripAll is entitled to revoke acceptance to the extent that it is determined that
20 GripAll accepted the 4520 Tape (which is specifically denied), under A.S. 45.02 *et seq.*

21 6.7 GripAll is entitled to recover damages allowed under A.S. 45.02 *et seq.*,
22 including incidental and consequential damages. GripAll's damages are greater than
23 \$75,000.00, the exact amount to be proven at time of trial.

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1 **VII. RELIEF REQUESTED**

2 On the basis for the foregoing allegations, GripAll demands the following
3 relief:

4 1. Awarding GripAll damages caused by ITC's breach of contract, breach
5 of implied and express warranties and failure to provide conforming goods. GripAll's
6 total damages exceed \$75,000.00, the exact amount to be proven at time of trial.

7 2. Awarding GripAll its reasonable attorneys' fees, costs and expenses
8 pursuant to Civil Rule 79, Civil Rule 82, AS 09.60.010, or otherwise allowed by
9 contract, law, or in equity.

10 3. Awarding GripAll any additional legal or equitable relief which the
11 Court finds just and equitable.

12
13 DATED: This 19th day of December 2014.

14 **AHLERS & CRESSMAN PLLC**

15
16 By: /s/ Brett M. Hill
17 Brett M. Hill, ASB # 1403014
18 Attorneys for Plaintiff
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